

PHILLIP A. TALBERT  
United States Attorney  
JUSTIN J. GILIO  
Assistant United States Attorney  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
Telephone: (559) 497-4000  
Facsimile: (559) 497-4099

Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
SALVADOR ORTIZ PADILLA,  
  
Defendant.

CASE NO. 1:21-CR-00239-JLT-SKO  
  
STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER  
  
DATE: February 15, 2023  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

**BACKGROUND**

This case is set for a status conference on February 15, 2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This, previous, and subsequent General Orders were entered to address public health concerns related to COVID-19.

1 Although the General Orders address the district-wide health concern, the Supreme Court has  
 2 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 3 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 5 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 8 or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 10 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 11 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 12 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 13 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 14 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 15 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 16 and the defendant in a speedy trial.” *Id.*

17 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 19 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 20 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 21 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 22 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 23 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 24 following the September 11, 2001 terrorist attacks and the resultant public emergency).

25 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 26 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 27 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 28 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL

1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be "specifically limited in time").

### STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status conference on February 15, 2023.

2. On February 1, 2023, the Court issued a minute order directing the parties to select a trial date. The parties have met and conferred and agree that one more continuance would be appropriate. The parties are in plea negotiations and the government plans to have a formal plea agreement for the defendant's review in short order. Because the parties do not anticipate this case necessitating a trial, the parties' preference would be to set the case for a status conference on June 7, 2023.

3. By this stipulation, defendant now moves to continue the status conference until June 7, 2023, and to exclude time between February 15, 2023, and June 7, 2023, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

4. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes reports, audio recordings, cell phone extraction materials, and search warrant photographs. All this discovery has been either produced directly to counsel and/or made

1 available for inspection and copying.

2 b) Counsel for defendant desires additional time to review the discovery, conduct  
3 independent investigation, consult with his client, and discuss a pretrial resolution of the case  
4 with the government. In addition, the defendant anticipates that the government will be providing  
5 a formal plea agreement and will need time to review that agreement and meet with his client to  
6 discuss it.

7 c) Counsel for defendant believes that failure to grant the above-requested  
8 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
9 into account the exercise of due diligence.

10 d) The government does not object to the continuance.

11 e) In addition to the public health concerns cited by the General Orders and  
12 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
13 this case because the defendant is not detained pending trial.

14 f) Based on the above-stated findings, the ends of justice served by continuing the  
15 case as requested outweigh the interest of the public and the defendant in a trial within the  
16 original date prescribed by the Speedy Trial Act.

17 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
18 et seq., within which trial must commence, the time period of February 15, 2023 to June 7, 2023,  
19 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]  
20 because it results from a continuance granted by the Court at defendant's request on the basis of  
21 the Court's finding that the ends of justice served by taking such action outweigh the best interest  
22 of the public and the defendant in a speedy trial.

23 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
24 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
25 must commence.

26 IT IS SO STIPULATED.  
27  
28

1 Dated: February 3, 2023

PHILLIP A. TALBERT  
United States Attorney

2  
3 /s/ JUSTIN J. GILIO  
JUSTIN J. GILIO  
Assistant United States Attorney

4  
5 Dated: February 3, 2023

6 /s/ Reed Grantham  
Reed Grantham  
Counsel for Defendant  
Salvador Ortiz Padilla

7  
8  
9  
10  
11  
12 **ORDER**

13 As the parties correctly noted, on February 1, 2023, the Court issued a minute order directing the  
14 parties to select a trial date. The parties state that they have met and conferred and they agree that one  
15 more continuance would be appropriate to allow for plea negotiations.

16 The Court notes that indictment in this case was returned on October 7, 2021, the arraignment  
17 took place on the same day, and the parties have had ample time to engage in settlement discussions.  
18 Accordingly, the parties' request for a continuance is DENIED.

19 The parties shall select a mutually agreeable trial date at the February 15, 2023, status  
20 conference.

21  
22 IT IS SO ORDERED.

23 Dated: **February 6, 2023**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE